HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. 704 (S/B) year 2002

Naubbat Ram Maurya

Versus

State of U.P. and others.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision. 13.11.2003

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 704(S/B) 2002

Naubbat Ram Maurya …..Petitioner

Vs

State of U.P. and others ….Respondents

Counsel for the petitioner M.C.Kandpal

Dated:- 13-11-2003

Hon'ble Rajesh Tandon, J.

Heard Shri M.C. Kandpal counsel for the petitioner and the learned Standing counsel for the State of U.P.

By the writ petition, the petitioner has prayed for the issue of a writ, order or direction in the nature of mandamus commanding and directing the respondents to pay the amount of gratuity increment, arrears, Group Insurance with the appropriate rate of interest.

Brief facts giving rise to the present writ petition are that the petitioner was appointed on the post of the supervisor herbs in Bhesaj even Jari Butti Vikas Yojna in Parvatiya Kshetra at Tehari Garhwal. On 9-11-95 the seniority list was published in which the petitioner was placed at serial no. 22 of the seniority list.

The petitioner has resigned from the service. After completing the entire formalities the resignation of the petitioner was accepted by the authorities on 13-12-2000.

The petitioner has stated that he has been paid 90% of the G.P.F and Group Insurance. The petitioner has made a representation for the payment of gratuity but no decision has been taken in respect thereof.

The petitioner has stated that he has received group insurance and earlier increments, arrears etc.

Standing Counsel has stated that since the petitioner has resigned from his Job therefore he is not entitled for the gratuity.

On the other hand counsel for the petitioner has submitted that the resignation has been accepted by the respondent after all the formalities on 13-12-2000, therefore he cannot be deprived from the retirement benefits viz, the payment of gratuity etc.

The petitioner has submitted that his representation is already pending and no decision has taken place as yet.

As held by the Apex Court the petitioner cannot be deprived from getting the gratuity. He is entitled for the grant of gratuity in view of the judgment of the Apex Court to the following effect:-
In State of Kerala and others Vs. M. Padmanabhan Nair 1985(1) S.C 429 it has been held by the Apex Court as under: -

"Pension and gratuity are no longer and bounty to be distributed by the Government to its employees on their retirement but have become, under the decision of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment."

In Dr. Uma Agrawal Vs. State of U.P. and another 1999(3) S.C. 438 it has been held by the Apex Court as under:-

"We have referred in sufficient detail to the Rules and instructions which prescribe the time-schedule for the various steps

to be taken in regard to the payment of pension and other retiral benefits. This we have done to remind the various governmental departments of their duties in initiating various steps at least two years in advance of the date of retirement. If the Rules/instructions are followed strictly, much of the litigation can be avoided and retired government servants will not feel harassed because after all, grant of pension is not a bounty but a right of the government servant. The Government is obliged to follow the Rules mentioned in the earlier part of this order in letter and in spirit. Delay in settlement of retiral benefits is frustrating and must be avoided at all costs. Such delays are occurring even in regard to family pensions for which too there is a prescribed procedure. This is indeed unfortunate. In case where a retired government servant claims interest for delayed payment, the court can certainly keeping mind the time-schedule prescribed in the Rule/ instructions apart from other relevant factors applicable to each case."

In Gorakhpur University and others Vs. Dr, Shitla Prasas Nagendra and others AIR 2001 SC 2433 it has been held by the Apex Court as under:-

"We have carefully considered the submission on behalf of the respective parties before us. The earlier decision pertaining to this very University reported in 1996(2) ESC 211 (All) (supra) is that of a Division Bench rendered after considering the principles laid down and also placing reliance upon the decisions of this Court reported in (1994) 6 SCC 589 (supra) which , in turn, relied upon earlier decisions in State of Kerala Vs M. Padmanabhan Nair (1985) 1SCC 429 :(1985 Lab IC 664) and AIR 1981 SC 212 (supra). This Court has been repeatedly emphasizing the position that pension and gratuity are no longer matters of any bounty to be

distributed by Government but are valuable rights acquired and property in their hands and any delay in settlement and disbursement whereof should be viewed seriously and dealt with severely by imposing penalty in the form of payment of interest. Withholding of quarters allotted, while in service, even after retirement without vacating the same has been viewed to be not a valid ground to withhold the disbursement of the terminal benefits. Such is the position with reference to amounts due towards provident fund , which is rendered immune from attachment and deduction or adjustments as against any other dues from the employee."

After relying upon the Judgment of Apex Court it has been held in H. Gangahanume Gowda Vs. Karnataka Agro Industries Corpn. Ltd. 2003 AIR SCW 885 as under:-

" It is evident from Section 7(2) that as soon as gratuity becomes payable, the employer, whether any application has been made or not, is obliged to determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the Controlling Authority specifying the amount of gratuity. Under Section 7(3) , the employer shall arrange to pay the amount of gratuity within 30 days from the date it become payable . Under sub-section (3A) of Section 7, if the amount of gratuity is not paid by the employer within the period specified in sub-section (3) he shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate not exceeding the rate notified by the Central Government from time to time for repayment of long term deposits; provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on

that ground. From the provisions made in Section 7, a clear command can be seen mandating the employer to pay the gratuity within the specified time and to pay interest on the delayed payment of gratuity. No discretion is available to exempt or relieve the employer from payment of gratuity with or without interest as the case may be . However, under the proviso to Section 7(3A) , no interest shall be payable if delay in payment of gratuity is due to the fault of the employee and further condition that the employer has obtained permission in writing from the Controlling Authority for the delayed payment on that ground. Under Section 8, provision is made for recovery of gratuity payable under the Act, if not paid by the employer within the prescribed time. The Collector shall recover the amount of gratuity with compound interest thereon as arrears of land revenue and pay the same to the person entitled. A penal provisions is also made in Section 9 for non-payment of gratuity. Payment of gratuity with or without interest as the case may be does not lie in the domain of discretion but it is a statutory compulsion. Specific benefits expressly given in a social beneficial legislation cannot be ordinarily denied. Employees on retirement have valuable rights to get gratuity and any culpable delay in payment of gratuity must be visited with the penalty of payment of interest was the view taken in State of Kerala and others VS. M.Padmanabhand Nayar, 1985(50) Fac LR 145. Earlier there was no provision for payment of interest on the delayed payment of gratuity. Sub-section (3A) was added to Section 7 by an amendment , which came into force with effect from 1st October, 1987. In the case of Charan Singh Vs. M/s Birla Textiles and Another, 1988 (57) Fac LR 543 SC, this aspect was noticed in the following words:-

"There was no provision in the Act for payment of interest whtn the same was quantified by the Controlling Authority and before the Collector was approached for its realization. Infact, it is on the acceptance of the position that there was a lacuna in the law that Act 22 of 1987 brought about the incorporation of sub-section (3A) in Section 7. The provision has prospective application."

In M.C.D. and Nand Kishore 2003(97) FLR P-158 it has been held that non-payment of gratuity is a continuing wrong. The observations are quoted below:-

(1) " We do not find any infirmity in the impugned order passed by the learned Single Judge.

(2) The respondent was employed as driver in the Health Department on 10th December, 1957. He retired from service on 30th June , 1998. The appellant paid a sum of RS. 1,09,098/- to the respondent as gratuity. The respondent not being satisfied with the amount of gratuity paid to him, filed and application before the Controlling Authority under the Payment of Gratuity Act, 1972. The Controlling Authority held the respondent entitled for an additional sum of Rs.47,301/- which was short paid to him by the appellant.

(3) The main grievance of the appellant is that the Controlling Authority did not take into consideration delay of the respondent in filing the application under the Payment of Gratuity Act, 1972 and the rules framed thereunder . The grievance of the appellant is misconceived as the non-payment of gratuity due to the respondent was a continuing wrong and there was no question of any delay in approaching the Controlling

Authority. Accordingly, we do not see any reason to interfere with the order passed with the Controlling Authority or the impugned order passed by the learned Single Judge. In the circumstances , the appeal fails and is therefore dismisses."

In view of the aforesaid observations the respondents are directed to decide the claim of the petitioner with regard to the grant of gratuity and thereafter pay the same forthwith with interest.

A writ of mandamus is issued directing the respondents to decide the claim of the petitioner with regard to the gratuity within 3 weeks of the filing of the certified copy of the order.

The writ petition is allowed. There will be no order as to costs.

13-11-2003 **(Rajesh Tandon, J.)**

Mohit